

Message Text

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ACTION ARA-14

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TO SECSTATE WASHDC 8143

C O N F I D E N T I A L SECTION 1 OF 2 SANTIAGO 1703

E. O. 11652: GDS
TAGS: SHUM, PINS, PGOV, CI
SUBJECT: MORE ON ENDING THE STATE OF SIEGE

REF: SANTIAGO 1622

1. SUMMARY: PINOCHET SAYS HE DECIDED TO LIFT THE STATE OF SIEGE
BECAUSE THE JANUARY 4 PLEBISCITE AND A RECENT GALLUP POLL SHOW A VAST
MAJORITY OF CHILEANS LIKE HIS RULE. THE GOC HAS GIVEN UP ITS AUTHORIT
Y

TO: HOLD PEOPLE INDEFINITELY IN PREVENTIVE DETENTION; TRY THEM UNDER
TIME-OF-WAR COURT MARTIOAS; RUSTICATE THEM; STRIP THEM OF CHILEAN
CITIZENSHIP. IT RETAINS: LIMITED PREVENTIVE DETEINTION AUTHORITY;
POWER TO EXPEL; THE EXISTING LIMITATIONS OF PRESS, ASSEMBLY, LABOR
AND OTHER FUNDAMENTAL FREEDOMS. HABEAS CORPUS IS NOT DIRECTLY
AFFECTED ALTHOUGH THE COURTS MAY CHOOSE TO BECOME MORE FORCEFUL;
THE NEW "RIGHT OF PROTECTION" (A HABEAS CORPUS-TYPE PROCEEDING FOR
PROPERTY RIGHTS) REMAINS IN ABEYANCE. LOCAL MILITARY ZONE COMMANDERS
MAY DEVISE THEIR OWN CURFEWS, BASED ON ECONOMIC RATHER THAN POLITICAL
CONSIDERATIONS. WE HAD EXPECTED PINOCHET TO DO SOMETHING LIKE THIS
LAST SEPTEMBER OR AT LEAST BY YEAR END. THE DECISIONS COMES AS NO
SURPORISE, BUT MAY HAVE BEEN ENSURED BY: THE REQUIREMENT TO HAVE ALL
FOUR JUNTA MEMBERS AGREE TO EXTENDING THE STATE OF SIEGE; ALLEGED
COMPLAINTS FROM CHILEAN AMBASSADORS THAT CONTINUATION OF THE
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STATE OF SIEGE MADE THEIR LIVES HARDER; THE DESIRABILITY OF
DEFECTING ADVERSE PUBLICITY BUILDING IN THE LETELIER/MOFFITT CASE;
AS WELL AS CONFIDENCE FLOWING FROM THE CONSULTA RESULTS. END SUMMARY.

2. IN ANNOUNCING THE END OF THE STATE OF SIEGE, PINOCHET CITED THE
ENDORSEMENT HE RECEIVED IN THE JANUARY 4 PLEBISCITE AND THE STRONG
IMPROVEMENT IN HIS RATINGS IN PUBLIC OPINION POLLS AS JUSTIFICATION

FOR THE "RELAXATION." HE DENIED THAT THE DECISION HAD ANYTHING TO DO WITH EXTERNAL PRESSURES. PINOCHET SAID THAT SUPPORT FOR HIS GOVERNMENT HAS RISEN FROM 53 PERCENT IN DECEMBER TO 75 PERCENT NOW (ACCORDING TO AN EARLY MARCH GALLUP SAMPLING IN SANTIAGO) AND THAT HIS OWN POPULARITY, AT 80 PERCENT, IS EVEN HIGHER. (COMMENT: WE HAD NOT THOUGHT THAT THE GOC'S POPULARITY HAD BEEN SO LOW IN DECEMBER -- SEE VARIOUS REPORTS ON PLEBISCITE.)

3. CHECKS WITH VARIOUS SOURCES AND OUR READING OF THE LAWS INDICATE THAT THE GOC MAY NO LONGER:

-- HOLD PEOPLE INDEFINITELY IN PREVENTIVE DETENTION. AS MODIFIED BY AN AUGUST, 1977, DECREE LAW (DL-377), THE PRESIDENT MAY DECREE THE ARREST OF PEOPLE FOR UP TO FIVE DAYS. THE WAY THE LAW NOW READS, THIS POWER CANNOT BE DELEGATED. HERETOFORE, LESSER OFFICIALS HAD AUTHORITY TO MAKE PREVENTIVE DETENTIONS FOR THE DURATION OF THE STATE OF SIEGE. NONETHELESS, UNDER CONSTITUTIONAL ACTS NOS. 3 AND 4 (SEPTEMBER, 1976) A PERSON MAY BE DETAINED FOR UP TO TEN DAYS (IF A "COMPETENT JUDGE" AGREES) BEFORE THEY MUST BE ARRAIGNED OR TURNED OVER TO THE MINISTER OF INTERIOR. THUS, THE GOC MAY NOW BE ABLE TO HOLD A PERSON LEGALLY WITHOUT CHARGE FOR A MAXIMUM OF ONLY 15 (10 PLUS DISCRETIONARY 5) DAYS.

-- APPLY RULES OF TIME-OF-WAR COURT MARTIALS IN CASES OF PERSONS CHARGED WITH VARIOUS INTERNAL SECURITY CRIMES. COURTS MARTIAL UNDER PEACETIME RULES HAVE STRICTER JUDICIAL STANDARDS AND MAY BE APPEALED TO A MIXED MILITARY/CIVILIAN APPELLATE COURT AND THENCE TO THE CIVILIAN SUPREME COURT. THIS SHOULD PROVIDE FOR CONFIDENTIAL

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IMPROVED OBSERVANCE OF ACCEPTED JUDICIAL PRACTICES.

-- RUSTICATE, "TRANSFER" OR INTERNALLY BANISH WITHOUT JUDICIAL PROCEEDINGS. THE GOC HAD USED SUCH "TRANSFERS" IN LIEU OF EXTENDED PREVENTIVE DETENTION IN RECENT CASES OF THE CHRISTIAN DEMOCRATIC LABOR LEADERS AND POLITICIANS. THE COURT'S RULING THAT SUCH PERSONS COULD NOT BE SENT TO A SPECIFIC PLACE WITHIN A REMOTE PROVINCE MADE THE SANCTION SOMETHING OF A JOKE.

-- STRIP CHILEANS OF CITIZENSHIP. THIS POWER LAPSED. IT WAS USED 8-9 TIMES DURING THE THREE AND A HALF YEAR SPAN OF THE STATE OF SIEGE, MOST NOTABLY IN THE CASE OF LETELIER.

4. ON THE OTHER HAND, THE STATE OF EMERGENCY (WHICH HAD CO-EXISTED WITH THE STATE OF SIEGE) HAS BEEN EXTENDED FOR ANOTHER SIX MONTHS EFFECTIVE MARCH 10. THE SAME AUGUST 77 DL WHICH PERMITTED PINOCHET TO DETAIN PEOPLE ALSO EXTENDED CERTAIN POWERS TO THE STATE OF EMERGENCY WHICH HAD BEEN THERETOFORE LIMITED TO THE STATE OF SIEGE; SPECIFICALLY:

-- THE POWER TO EXPED PEOPLE BELIEVED TO THREATEN INTERNAL SECURITY;

-- PROHIBITIONS ON LABOR ACTIVITIES SUCH AS MEETINGS,
ELECTIONS, ETC.;

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5. IN ADDITION, THE SAME ACTIVITIES WHICH WERE "CRIMES/ BEFORE
CONTINUE UNCHANGED ALTHOUGH PUNISHMENTS MAY BE SLIGHTLY REDUCED. THIS
APPLIES TO THE BAN ON POLITICAL ACTIVITY, STRIKES, COLLECTIVE
BARGAINING, RESTRAINTS ON MEDIA, ASSEMBLY, ETC. ZONE COMMANDERS STILL
MAY ISSUE "BANDOS" CONTROLLING JUST ABOUT ANYTHING THEY BELIEVE
NECESSARY TO "MAINTAIN INTERNAL ORDER WITHIN THE ZONE."

6. "EL MERCURIO" SUGGESTED MARCH 10 THAT HABEAS CORPUS PROTECTION
WOULD BE EXPANDED. THERE APPEARS TO BE SOME QUESTION ON THIS
SCORE. HUMAN RIGHTS LAWYERS SUGGEST THAT THE RIGHT OF HABEAS CORPUS
HAS BEEN AVAILABLE, AT LEAST FOR THE LAST YEAR, BUT THAT
THE COURTS NEVER PUSUED PETIONS STRENOUSLY IF THE GOC DENIED HOLDING
THE PERSON. IT IS CLEAR THAT THE SO- CALLED "RIGHT OF PROTECTION"
INCORPORATED AS A MAJOR INNOVATION IN CONSTITUTIONAL ACT NO. 3 STILL
WILL NOT ENTER INTO EFFECT BECAUSE OF A SPECIFIC EXEMPTION PROVIDED
IN
CONSTITUTIONAL ACT NO. 4.

7. QUESTIONS REMAIN IN OTHER AREAS AS WELL. SOMEHUMAN RIGHTS LAWYERS
BELIEVE THAT CERTAIN SANCTIONS TAKEN BY THE GOC AUTOMATICALLY EXPIRE
WITH THE END OF THE STATE OF SIEGE. PARTICULAR ATTENTION HAS BEEN
GIVEN TO THE RIGHT TO RETURN OF PERSONS EXPELLED BY THE GOC. ONE
RUMOR HAS IT THAT CHRISTIAN DEMOCRATE IDEOLOGUE JAIME CASTILLO
MAY TRY TO RETURN TO CHILE UNANNOUNCED, THEREBY FORCEING THE GOC
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TO ISSUE ANOTHER DECREE IF THEY WISH TO RE-EXPEL HIM. AT A MINIMUM HE WOULD BE TRYING TO ESTABLISH THAT THERE IS LITTLE DIFFERENCE BETWEEN THE STATE OF SIEGE AND STATE OF EMERGENCY.

8. THE CURFEW IS NOW TO BE CALLED "RESTRICTIONS ON NIGHT-TIME MOVEMENT" AND HAS BEEN JUSTIFIED ON ECONOMIC (TO SAVE ELECTRIC POWER, GASOLINE, ETC.), NOT POLITICAL, GROUNDS. EACH ZONE COMMANDER MAY SET THE CURFEW FOR HIS AREA AS HE BELIEVES APPROPRIATE.

9. COMMENT: EVENTS WILL DETERMINE THE PRACTICAL EFFECT OF LETTING THE STATE OF SIEGE LAPSE. THE JURISPRUDENCE WHICH HAS DEVELOPED SINCE THE COUP IN INTERNAL SECURITY AFFAIRS HAS BECOME EXTREMELY COMPLICATED AND THE CURRENT DECISION MAY YIELD ADDITIONAL SIGNIFICANT CONSTRAINTS ON GOC AUTHORITY. THE IMMEDIATE IDENTIFIABLE IMPROVEMENTS MAY ALSO BRING A GREAT JUDICIAL ASSERTIVENESS AND HAVE A MULTIPLIER EFFECT. THE GOC RETAINS SUBSTANTIAL LATITUDE HOWEVER. MOST OBSERVERS HAD EXPECTED PINOCHET TO TAKE THIS STEP LAST SEPTEMBER 11 OR SOMETIME IN DECEMBER AT THE LATEST. ACCORDINGLY, IT COMES AS NO T SURPRISE AT THIS TIME. STILL TO APPEAR ARE THE REGULATIONS WHICH WOULD PUT INTO EFFECT THE EMERGENCY REGIMES OUTLINED IN CONSTITUTIONAL ACT NO. 4. THEY INITIALLY WERE TO HAVE BEEN PROMULGATED IN MARCH, 1977, BUT THE GOC GAVE ITSELF AN INDEFINITE DELAY. SOME LEGAL EXPERTS BELIEVE THAT THESE REGULATIONS HAVE BECOME EMBROILED IN THE MAJOR REVISION OF THE INTERNAL SECURITY CODE WHICH WAS TO HAVE COME OUT YEARS AGO.

12. A NUMBER OF ADDITIONAL FACTORS PERSUADING PINOCHET TO MAKE THIS MOVE NOW INCLUDE:

-- MECHANICAL ONES. THE ENTIRE JUNTA WOULD HAVE HAD TO AGREE TO PROLONG THE STATE OF SIEGE. GENERAL LEIGH IS KNOWN TO HAVE OPPOSED DOING SO. THE PRESIDENT AND MINISTERS OF DEFENSE AND INTERIOR ARE SUFFICIENT AUTHORITY TO DECREE A STATE OF CONFIDENTIAL

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EMERGENCY;

-- INTERNAL PRESSURES. IT HAS BEEN REPORTED THAT DURING THE JUST

- CONCLUDED CONFERENCE OF CHILE'S HEMISPHERIC AMBASSADORS (COINCIDENTLY HELD WHILE OURS WERE MEETING IN WASHINGTON), A NUMBER URGED THE GOC TO MAKE THEIR JOB EASIER BY LIFTING THE STATE OF SIEGE.

-- LETELIER CASE. AS REPORTED IN LOCAL PRESS CIRCLES, GOC ENVOYS IN WASHINGTON DISCUSSING THE LETELIER CASE FOUND USG OFFICIALS "PLEASANTLY SURPRISED BY THE GOC'S DECISION." THE CHILANS REPORTEDLY DEPICTED THE MEASURE AS ANOTHER STEP ON THE WAY BACK TO NORMALITY, A FAVORABLE DEVELOPMENT AT A DIFFICULT TIME.

-- "CONSULTA" AND GALLUP POLL RESULTS. THE RECENT 75 PERCENT

"YES" VOTE AND GALLUP RESULTS, PLUS A TRANQUIL ATMOSPHERE (BASED ON
RESIGNATION AS WELL AS SUPPORT) HAVE PROBABLY COMBINED TO REDUCE
PINOCHET'S DEFENSIVENESS.
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